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## **7<sup>th</sup> European Conference on Family Law**

### **“INTERNATIONAL FAMILY MEDIATION”**

Council of Europe, Strasbourg  
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## **CONCLUSIONS**

**by Ms Renate Winter**

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Ladies and gentlemen, members of the Family Law Committee of the Council of Europe, representatives of international organisations, family mediators, representatives of the civil society, dear guests,

It is a pleasure for me to be present here today and to have the honour and difficult task to close this successful event. The task is difficult, because it is extremely challenging to choose main points and ideas from presentations of experienced and knowledgeable speakers, and from a discussion which was well-targeted. However, by accepting the role of the general rapporteur, I knew what I was getting into....

Before getting into a resume of our honourable speakers, I would like to use Lisa's presentation to set out a list of aims to be clear about what we want.

### **I - Why using family mediation?**

- To have means, easily available, quickly accessible and used more readily
- Best practice
- Having if possible peer mediation (male/female, social/judicial, both mediators speak both languages, representative of both countries/cultures)
- Memorandum of Understanding if possible
- Court order if possible (Judges should be offered training or information)
- Special focus on child abduction because of time limits
- Prevention of unlawful removal
- Dealing with unlawful removal in appropriate time
- Restoring links and trust
- If possible contacting mediation at the place where the child resides
- Solutions for removal with code procedures as well as without code procedures
- Solution should be quick, effective and child-centered
- Early involvement of all players concerned according to culture/legal system
- Explanation of safe-guards for the different players
- Agreements should be formalized, legally enforceable and made with consent (Swiss Federal Act on international child abduction = good example: central authority to assist)
- Different approach if both parties come from a member State to the Hague Agreements or if one party or both parties are non-members.
- Possibility to look into bilateral Treaties
- Problem of enforceability
- Considering locally valued persons/institutions for training (Judges of peace, Community Elders, Religious persons etc.)

This might sound very polite, but I need to stress how enriching this conference was for me personally. It is common knowledge that mediation is a very ancient practice, the origins of which can be traced back to the Far East, where it emerged a long time ago. Therefore, I very much appreciated the opportunity to learn about family mediation practices not only in Europe, but in the Caribbean, Latin America, and about Muslim Ismaili communities throughout the world. I am delighted that the Conference succeeded in having a worldwide, and not a Euro-centric appeal, and those interventions provided an invaluable contribution for the better understanding of family mediation practices.

Turning more precisely towards Mr Fiadjoe's presentation, it became clear that the Caribbean societies are tied together by a strong societal and family bond. This also means that various concepts, applicable in Western societies, do not have the same importance there (or elsewhere). For this reason, nothing prevents the establishment of a core of universal values based on best mediation practices, but only in the context of "diversity in unity". He also mentioned some practices in his native Africa. Thank you, Professor Fiadjoe, for bringing this sunny, humane, enriching insight into this Strasbourg climate!

On his side, Mr Keshavjee analysed the amicable resolution of conflicts in the Ismaili Muslim communities, practices which are deeply embedded in Islamic tradition, as well as in many national, secular legal instruments where those communities live. In those Ismaili communities, different boards are set up in order to encourage amicable resolution of conflicts, a service which is being increasingly used, in some countries, by non-Ismailis. The reconciliation and settlement of disputes in respecting the Islamic religious tradition, being at the same time in full accordance with national legislation and the rule of law, is very encouraging in times where communautarisme and the rule of law are not always reconciled. This is a very practical example of inter-religious and inter-cultural dialogue that we need so badly these days.

Mr Bustelo shed light on family mediation practices in Ibero-America. Their developments are of utmost importance, and demonstrate the various cultural and educational influences that family mediation is subjected to in that region. Bearing in mind the number of young academic professionals in this room, I expect some significant drafting and publications on this topic to take place soon!

During the rest of the morning, we heard a number of other prominent speakers, who discussed developments of family mediation in international cases. During the June 2008 Colloquy, it became clear that there is a body of principles and standards which are being developed in binational commissions, for example in the German-Polish Commission, which remains the most active and relevant one in Europe. Some of its practices (i.e. existence of one male and one female mediator, one legal and one non-legal professional person etc.) deserve to be particularly pointed out. Moreover, we can only support the new beginning of work of the German-French Commission, and we invite other states to consider the need to create such commissions.

Some of the figures quoted, for example the fact that only in the past year over 17,000 family cases were mediated in England and Wales, are quite astonishing. In that country, like everywhere else, family mediation is used mainly in separation and divorce on issues such as children, finance, and property matters, but it can also be used in other kinds of family disputes. It is very important to keep this in mind.

Although mediation has without any doubt been a great success in some countries, it is apparently not yet frequently used in Eastern and Central Europe. We can safely assume that the prospects of family mediation in Russia are to a certain extent connected with the prospects of mediation itself. Taking into account the current great interest for mediation in the country and increase in cross-border family law disputes, it is safe to assume that both national and international family mediation will be developing more or less simultaneously.

Various initiatives could be envisaged, in my opinion, to assist member states in their use of family mediation in an increasingly internationalised world. I am glad that some states recognise the added value brought by international organisations in this respect, and I believe those organisations have the duty to listen to them and to react accordingly.

The afternoon session was an opportunity to discuss many practical problems regarding the training of family mediators, while at the same time identifying a number of good practices. I could not agree more with the statement of Ms Parkinson concerning the need for specialisation in cases of child abduction. This might be said for family mediation in general. Training for international family mediators is a sensitive subject which needs to be further developed, as there are currently many different standards and systems regarding the requirements for a family mediator, and great disparities in terms of curricula, certificates obtained and training possibilities in general. Some systems are more formalistic, while others put an emphasis on practical training. Both systems present advantages and disadvantages. Very concretely, the unanimous conclusion is that:

Firstly, we need to harmonise those systems, their qualifications and agree equivalences,

and secondly, we should create a centralised register of competent accredited mediators, who would assist individuals and authorities to identify and contact certified and qualified mediators.

The Conference also took stock of the activities of different international organisations active in this field, such as the Hague Conference on Private International Law and the European Commission. Equally, we found activities of the European parliamentarian mediating cases of child abduction very interesting. It is my general impression that relevant international organisations co-operate well in this area and that there is enough room for action by all them, in their specific areas of expertise. I would like to encourage therefore everyone involved to continue this fruitful co-operation. Although I remember what Churchill thought of working groups (he said something like-if you wish something to fail, then create a working group to work on it), I still think that the idea of creating an inter-agency working group is important and deserves to be carefully considered by everyone involved.

To end with I would like to quote Lisa another time in listing the tools we need.

## **II - Tools**

- Develop pre-mediation standards to be used if necessary (Guidelines)
- Develop training standards (Manual, DVD, guidelines,)
- Develop qualification for family mediators (Harmonizing training methodology: length of theoretical training, supervised practice, evaluation, content)
- Harmonize standards
- (Concerning psychology, sociology and law, development of complementary models)
- Consider direct mediation and indirect mediation (telephone, web, videoconference)
- Considering all international instruments already developed (directives, fundamental rules, guidelines, international agreements)
- Extend a code of conduct for international mediators

- Consider different models of international mediation for cross-boarders cases
- Develop criterias for membership of a register of international family mediators

In concluding, I would like to thank everyone again for having come here today and for having participated in the Conference. The day has been extremely productive, although the programme was very ambitious. Furthermore, I should like to give special thanks to the Council of Europe for having organised and hosted this conference and for promoting constantly the development of family law and issues, such as family mediation. This is praiseworthy in times of economic and financial crisis. Finally, I would also like to take this opportunity to urge the Council of Europe to work on and further develop the interesting proposals made today.